

J. Knight.

REFLECTIONS

ON

GAMING, ANNUITIES,

AND

USURIOUS CONTRACTS.



THE SECOND EDITION.

L O N D O N.

Printed for T. DAVIES, in Ruffel-Street, Covent-Garden;
J. Baw, Pater-noster-Row; and T. WALTER, Charing-Cross,
M DCC LXXVII.



REFLECTIONS

LIBRARY
ON BOARD OF TRADE

GAMING, &c.

THE changes which have taken place in the manners of the English nation since the beginning of this century, are so very incompatible with that spirit and characteristic which distinguished the founders of our laws and constitution, that any future decline of the greatness and prosperity of which they were the causes, would be a subject rather of lamentation than surprise.

B

The

The British government is too often displayed as a machine both by lawyers and historians: It is so systematically considered, as if it was in fact governed by the immutable laws of mechanics in the action and re-action of its balancing powers, without any allowance for the fluctuation of human passions to disturb its motions, that its delineation on paper wraps up the political contemplator in a baseless security. It is like viewing a complete and impregnable fortress, with all its moats, ramparts, and outworks, without respect to the garrison that is to defend it; if either the officers betray their trusts, or the soldiers lay down their arms, the labours of art, and the science of ages only serve to swell the pomp of the capitulation, and the triumph of the victor.

It may be safely asserted, that the most pure and ingenious combinations of human society can no more defend themselves by their mere forms, than this fortress by its walls and tubes of iron, without the continual operation of the wisdom that planned, and the obedience

dience which laboured to construct them. The legislator only builds and launches the vessel of the state, the multitude are the mariners that must ply her from the rocks, and conduct her through the storm.

It is only by watching and reforming the general manners, that a nation can be preserved; for of what consequence is the finest system of laws, if the morals of the people that are to obey and to defend them, are contaminated and lost; their dictates will be despised, and their execution cannot long continue. For although the sheriff may lead the felon to the gibbet, and execute in peace the commands of civil justice, yet the legislature, on which these authorities depend, being gradually undermined by the vices of the times, the constitution must soon be shaken from its foundation, and bury both the laws and their judges in its ruins.

Among the various accomplishments which distinguish us from our vulgar, insipid ancestors,

tors, Gaming * seems to claim the pre-eminence. There is something so striking and ingenious in demolishing with a single turn of the elbow, the labours and industry of successive generations, that it is impossible not to admire the sublimity of modern ambition, in atchieving so great a miracle. And, indeed, its happening sometimes, may have useful consequences. It may teach us to set bounds to worldly cares and wishes; not to scrape together by cunning and labour what is to be scattered again by simplicity and folly, and to bestow upon the deserving in our lives, what the sharper is to seize after our deaths. Individuals may reap such useful lessons, but

read

* By Gaming the author by no means includes the general recreation of cards, where the stake, according to the fortunes of the players, is just sufficient to excite attention, and not so large as to produce bad consequences either to individuals or society. He knows that many thousands of the gravest and best characters in the kingdom play at cards every night in their lives as habitually as they take snuff, and just as innocently; and therefore begs not to disgust the public by setting an universal amusement in an odious light. He is speaking of gaming as a trade, not as a pleasure; as a mode of living, and not of passing life,

they

they must read them in the ruin of their friends and families, and in the destruction of their country.

There is not in the whole catalogue of human frailties a passion which so thoroughly enslaves the heart, and deadens it to every feeling of a man, or duty of a citizen, as this fashionable ^{to which} madness, when carried to the height, it has now arisen. There is not a vice incident to polished life which can less be defended on any principle, or inclination which a man of honour would wish to plead as an excuse. The other vices which form the dissolute characters of a luxurious age, bad as they are, have nature on their side, and are sometimes but the misapplication or even the excess of cordial honest dispositions: Riot is often but the ebullition of merriment, and drunkenness not seldom the infirmity of a social spirit; swearing is frequently an unlucky unconscious habit in men otherwise impressed with a deep sense of religion; and the love of women is but the natural career of youth and constitution, whose consequences, destructive as they may be to society or
our-

ourselves, are seldom premeditated; and whose object is at least the generous idea of a joint gratification, and not the pursuit of happiness in the immediate misery of another.

But gaming, particularly in high life, has no decent advocate to appear in its cause, but is from the very beginning a sordid, ungenerous, dishonest passion, to appropriate what is neither wanted on one side, or can be spared on the other; its object is pursued with care and inquietude, possessed without enjoyment, and lost with fullness and chagrin. Its victims appear more like criminals dragged by force before an inquisition, than friends assembled for recreation: Every countenance is the caricature of some ugly passion; for in the alternate whirls of fortune there is no time for any sensation but uneasiness; the cup of their pains and pleasures is so mixed and dashed with each other, that it is one continued, nauseous, brackish dose, which increases the thirst, and leaves both disgust and desire behind it. Such are the joys it brings to its votaries; let us view its consequences to society.

If

If noblemen, and the heirs of splendid fortunes, after having squandered their present possessions, or anticipated their future prospects, were to sink backwards into the lower ranks of mankind, and to mingle again with the croud from which the virtue or industry of their predecessors originally called them, the gaming of the great would hardly be a national evil; but when the ruined peer continues to be indefeasibly a legislator, and the nominal possessor of an estate which a Jew broker enjoys, has still the superiority over a county or a borough, and takes almost an hereditary seat in the senate, he must be a shallow politician who does not foresee the destruction of the purest and most durable constitution. The science of legislation, and the intricacy of political calculation, is a very different study from the chances at hazard; the honor that must stand the siege of corruption, and fulfil the sacred trust of the people, is not the same principle with the honour of a gamester. Every man incumbered with the consequences of his vices or his follies, who comes into parliament, is a mill-stone about the neck of his country. He that has
had

had so little thought for himself, will have still less for the public ; the man who has dismembered his fortune, will dismember the empire to recover it.

The contagion of example has circulated this madness through every gradation of life, where in the lower ranks it oftener ends in the murder of others than in suicide ; the streets are infested with thieves, and the roads with ruffians ; for gaming not only occasions poverty, by the loss which one party must ever sustain, but in the luxury and expence which always attends it, and in the annihilation of every idea of the value of money. For to the great, five guineas or five shillings is the same expence for a dinner at the tavern, when the stake is for a thousand ; and the tradesman in the ale-house, allured by the uncertain idea of gaining a crown, does not count upon the certain loss of half a crown that is scored up against him at the bar. In a very short time bankruptcy follows ; it runs like wildfire on every side, and spreads misery and devastation all around. The jails are filled with debtors
which

which languish away unheard of, and the gibbets bend with the bodies of assassins; the women turn prostitutes, and if not swept away by the arm of justice, are left to rot by inches in the streets, to poison the sources of the rising generation, and nip population in the bud; while the children that in a few years should be ready to arm in defence of their country, when so many clouds are thickening over her, are left to perish for want of care, or survive only to infect society with their vices.

Such is the picture of *England*, drawn from enquiry and observation, and not from fancy. Such were not the men nor the manners that established our political system, and begot a characteristic, awful to the world; a characteristic which we still boast of as an inherent radical principle, which nothing can destroy, which is to do every thing for us, and which our historians have fondly prophesied to be immortal. Conclusions which I pray God may not soon be contradicted by experience.

It is obvious to common observation, that all these mischiefs are chargeable on the great, with whom the evil originates, and from whom it descends, like other fashions, to their inferiors; and which, if they could be prevailed upon, or forced to relinquish, would cause a general reformation of manners, which no laws can reach to establish: Punishment is only cruelty, when prevention is impossible, and it is folly to expect by police to make a people virtuous, when their superiors, whose vices they ever copy, by whom the laws are both made and executed set them the example of breaking them; Nor will they be backward in reasoning from analogy upon the other restraints of society, but will obey a turbulent passion, or what is worse, a turbulent leader, in defiance of government.

Experience has sufficiently proved the futility of penal statutes, in the correction of this most destructive vice; where the informer loses more in being excluded from so lucrative a society, than he can gain by the conviction of the offender; the gentleman, who is in general the sufferer, will not inform, because his honour, and the sharper, because

because his interest forbids him. Of what use then are laws, which though the continual breach of them is certain, can neither be proved or punished?

The same inconvenience must necessarily pursue every enlargement, variation, or aggravation of penalty that can possibly be devised; the spirit of the English law forbids a man to accuse himself, and no character is so detestable in a free country, as an informer; prosecutors will rarely be found, and evidence will ever be wanting; if the forfeitures are heightened, and new allurements are thrown out to accusers, the caution of these societies will only become the greater, and conviction the more difficult; they will bind themselves, like free masons, to an oath of concealment, and thrive, like all other sectaries, under the scourge of persecution. There is however a possibility of removing these obstacles, by entirely repealing, in the first place, all the penal statutes against gaming, so that it may be no kind of offence to play to any amount, and then passing an act of Parliament that all sums over and above
 forty

forty pounds to be won by any individual within the space of twenty-four hours, should immediately vest in and become appropriated to the use of the sinking fund, or to the furtherance of any public object which the legislature might think fit to direct.

This appropriation would entitle the servants of the crown, in the case of the sinking fund, or the governors of Chelsea or Greenwich, should Parliament think fit to vest it in these national charities, to file bills in chancery against all the members of gaming clubs, or any other person whose good-luck they might hear of, compelling them to account upon oath for the money which they had so generously levied for the public, at the risque of their own. The criminality being entirely done away by the repeal of the penal acts, I apprehend that no man could refuse to answer upon oath to the bill of discovery, but must either be guilty of corrupt and wilful perjury, or pay in the fruits of his good fortune, like a faithful trustee of the public. Such a system, if carried into execution, I am inclined to believe,

lieve, would not a little damp the spirit of hazard. Few would be so patriotic as to cock a card for the sinking fund, or so charitable as to go at every thing for Chelsea or Greenwich hospitals. But it is to be feared that gaming is too strongly intrenched in the houses of the great, to be thus boldly attacked in front. These appropriations would be thought to carry the air of inquisition; notwithstanding the repeal of the penal laws, they would be considered as disguised penalties, and the liberty of the subject would be made use of as a popular argument against the discovery, by the oath of the defendant.

I believe therefore that it will be found more expedient to proceed by sap than by storm, and that no remedy will prove so sure as to dry up the source from whence the evil is fed, by rendering it impossible, or at least difficult to raise the necessary supplies for carrying on the campaign: when men have neither money or its substitute, honour will soon become an uninviting stake; the sharper will not play his ready money against honour; and the gentleman will not think the sharper's

per's oath a good cover for a bet of which his word is the security. When the oil is spent, the lamp will go out of itself without an extinguisher; draw off the water from a man of war, and it is as great a victory as to blow her up or sink her. A gamester without his Jew, is this very lamp without oil, or this ship without water; if money could not be had in the instant, by the sale of annuities, or by other usurious contracts, the fit would go off, reason would return, and little mischief is done, when the present is only lost, and the future remains unanticipated. Let us consider the power and duty of the legislature to advance this remedy, and as it appears at first view to strike at the spirit of our laws, by controuling the subject in the disposition of what is his own, let us turn it in every light that equity or policy can require it to be viewed.

A free and unrestrained power of alienation of every species of property seems not only to be the characteristic but the parent of freedom; the feudal system that denied it,

was

was a system of slavery, and as soon as this basis of its tyranny was shaken, the whole fabric fell to pieces; the current of human equality issuing from the exalted source of human nature, but choaked up and interrupted in its course by the Gothic tenures and manners, after undermining by degrees, and finding a silent way through its obstructions for several ages, at last broke over its mounds in the beginning of the seventeenth century, and seeking its way with fury and impetuosity, overshot the mark with its projectile force and overturned the constitution, 'till after various undulations it settled itself at last in that calm and peaceful state in which all undisturbed fluids remain when at their level, and at which all bodies in creation rest when at their natural stations.

Property is the cause of all power, and its changing hands by sudden strides is the cause of forcible convulsions, while the silent shifting of its channel is only the current of the blood, and the health of the political body. All sudden transitions, therefore, from poverty to riches, or from riches to poverty, in
a mul-

a multitude of individuals, at the expence of each other, as they are unnatural motions, and never can happen but by vicious practices inimical to commerce, are to be guarded against by every prudent legislature, as far at least as is consistent with the great leading principle of freedom already laid down; a principle which may be reduced to this natural privilege,—*Sic utere tuo ut alienum non lædas*. This is the law of property which nature prescribes, and the municipal law of this country follows, or at least intends to follow the law of nature in all its dispositions; never abridging the natural liberty of the man, but to promote the political liberty of the citizen; and no well calculated restraint, whose object is the latter, can be any infringement of the former.

To keep these two objects constantly in view of each other, is the grand duty of legislation; for these purposes the subject peaceably parts with a share of his natural freedom, and submits the regulation of his property to the distributions of law, and the formalities of justice.

If

If we examine the rule of property upon this equitable scale on which it is measured and supported both by natural justice and the spirit of our particular government ; it will appear astonishing that annuities for the life of the seller, as they are generally transacted, have been so long permitted to wear the mask of law, and to set the seal of a court of justice to enforce the most abominable and oppressive fraud that avarice can possibly inflict, or necessity can suffer ; the slightest enquiry will uncover the men that deal in this dishonest traffic, and display them naked usurers to the inspection of the public. I wish for the honour of our religion and country, that it was confined to the first parents of usury, who are willing to bear the shame for the advantage : but I believe that many are engaged in it, whose fortunes, stations, and principles afford no excuse for this inhuman practice of setting a trap for their fellow-creatures.

It is said to be founded in revelation that all the *Jews* must be converted to christianity before the end of human things ; if this be

D

true,

true, the end is as yet far off, and the world is in a state of retrogression. For my own part, I am inclined to think from a view of the times, and from a desire of supporting the authority of scripture, that there is a mistake in the text, and that on the contrary all the Christians must become Jews; by which construction the progression towards that solemn event is visible and rapid. It is but justice to observe too on this head, that the Jews are not forbid usury by their religion: they are only desired not to take it from their brethren, for Moses allowed them to squeeze the marrow out of others. What a misfortune then for a gambler to be a christian, what a pity it is, that our illustrious youth should bear the yoke of the cross, without looking up to its blessings and redemption.

Having ventured this gentle animadversion on the honorable society of annuitants, let us now examine the annuity itself on legal grounds, which cannot be done so clearly, as by premising some general observations, on the nature of interest and commercial contracts.

The

The calculation of legal interest as it is opposed to illegal usury, is generally formed by a compound consideration of inconvenience and hazard; of the want of the present use of the money, and the risque of losing it altogether; but as this inconvenience necessarily depends on the quantity of money in circulation, the rate of interest is made to follow these fluctuations, and on this principle has been reduced in England since the reign of Henry the eight from 10 to 5 per cent. at the command of the legislature, the inconvenience of lending being diminished by the glut of riches arising from the introduction of paper credit and the discovery of the Indies. But as the hazard can not be reduced to a general standard like the inconvenience, from the variety of pecuniary contracts which arise in a great commercial country and without which trade cannot be carried on, variations from the general law are permitted in many cases, which shall be pointed out and explained.

The learned Grotius observes on this subject, that if the compensation for the use does not exceed the proportion of the hazard run,
or

or the want felt by the loan, it is neither repugnant to the revealed or the natural law ; but that if it exceeds these proportions, it is oppressive usury. From this definition a conclusion shameful to annuitants would evidently follow ; since the risque of lives in general, at the common rates of insurance, can never justify so low an estimation as five or six years purchase, when the interest is secured by a bond and judgment ; but I reject a ground that might be disputed by a plausible advocate ; I choose to combat them on the great principles of commerce, and to follow them to their holes by the clear light of equity.

If we examine this definition of usury which I have cited from Grotius, we shall find that though very just as far as it reaches, yet it is greatly defective and by no means sufficiently general. There is another and not less important view in which equity requires that interest should be considered, besides the estimate of the hazard and inconvenience of the lender ; for if the interest to be paid for the money lent, is beyond all possible estimation
of

of advantage to be made of it by the borrower, it is destructive of the first principles of all commercial contracts, which have for their object the advantage of both the contracting parties. Usury therefore is not in my opinion so well defined by our great Lord Coke who wrote before its proscription as by authors of inferior authority ; he defines it to be the gain of any thing above the principle exacted in consideration of the loan ; while others have called it with more truth tho' with less legal precision, an exorbitant profit exacted for a loan made to persons in distress. This is certainly the hinge on which usury turns ; for in almost all cases where the borrower can make a legal and commercial advantage of the loan not inconsistent with the public good, it is not considered as usury whatever premium be paid ; because it is a contract founded on national prosperity and mutual advantage, and not by avarice on the one hand and necessity on the other. On this principle alone the law allows policies of insurance, bonds on *respondentia*, and on ships and their cargoes ? Exceptions to the general rate of interest founded on the truest spirit of commerce, and therefore vacated on the shadow

shadow of injustice or oppression ; their end not being to permit artful enterprising men to grow rich at the expence of fools, or the profligate to riot in misfortune, but to share the burthen of human losses among a number, which in great concerns would depress and ruin individuals, to bid defiance to the elements, the waves and every accident of life, and by a prudent communication of a share of prosperity, to avoid the possibility of poverty. For if the cargo is lost, there is no father to weep over a starving family, because the owner has paid his insurance, and receives the value of the commodity which lies at the bottom of the ocean, and the insurer to indemnify his disbursements has received the premium of a thousand others that are returned safe into port. This is the genuine spirit of trade, where industry and honesty spread their blessings around, and no man rises on the ruin of another, where misfortune's shafts are spent in air, or fall unfelt on the shields of the commercial phalanx.

As a proof that it is solely on this principle of public and mutual advantage that the laws

laws tolerate this marine usury ; double insurances, bonds for more than the value of the cargo, and without the benefit of salvage, insurances interest or no interest, wagering policies, and every pecuniary contract not justified by the spirit of trade, are interdicted by statutes on the severest penalties, cannot be recovered in the courts, and the offenders on conviction deprived of the benefit of the bankrupt laws : because although on the one hand, the gain may be no greater than by legal loans and policies, yet in these feigned cases the loss must fall heavy somewhere, and cramp the spirit of trade ; the others being only supported by law, because they are founded on equitable and commercial principles, since it is but reasonable that a man who runs an extraordinary risque for the benefit both of the public and the borrower, should be intitled to a share of the extraordinary profits.

But were a man to lend his money on the same conditions as respondentia to a person going to a gaming table instead of to India, expressing in the bond that the capital was to be

be restored together with twenty per cent at the end of eighteen months if the dice run favourably, this would no longer be a lawful contract, but notorious infamous usury which nobody would have the impudence to produce before a court of justice. For although the risque be ten times greater in lending to the gamester driving to Whites, than to the merchant sailing to the Indies, yet the principle of public and mutual advantage being lost on which even common interest is founded, and supported, the contract instantly changes its nature, and rests upon the honor of an individual, instead of the sanction of the laws.

If we examine annuities, which are evasions of the statute of usury, on the same principle of greater hazard than the general legislative estimate, we shall not find it so easy to reconcile them with the principles of equity and commerce, as those contracts which have been already spoken of and applauded.

Annuities may be divided into two kinds :
on the life of the buyer, or on the life of the
seller.

feller, and the difference between them is very considerable; for it is plain that no tenant for his own life can sell an annuity to continue during the life of another; because the other man by surviving him, may outlive the term of the feller's interest in the estate. An annuity for the life of the buyer is for the same reason much more valuable than one for the life of the feller; because although of equal ages, and upon every other calculation their lives may promise an equal duration, yet in the one case there is uncertainty, and in the other absolute safety; in the first, the holder of the annuity is sure of his income for his own life, whatever may become of the feller's; in the second, he holds it on the feller's life, who may die before him.

Annuities for the life of the buyers are attended, in most instances, with little mischief, and may be defended on principles of necessity and convenience. First, because the person selling for the life of another, has generally the entire property, or a long term of the estate on which the annuity is charged,

E

or

or a perpetual or lasting interest in the fund from which it issues, and may therefore sell or mortgage and discharge the incumbrance. Secondly, Because the price given being double that of the other, it bears a much nearer proportion to the real value of the annuity granted, and is often for the benefit of both parties. To the seller who employs the money in some lucrative trade, which enables him to redeem it, and make the capital his own; to the buyer, who at the low rate of public interest could not derive a subsistence by lending money on mortgage, or investing it in the funds; the situation of many younger children, (particularly females) of the first families in the kingdom, who since the decrease of the value of money and the increase of luxury, have no other way of making their portions maintain the decencies of their stations.

But annuities for the life of the seller, which are by far the most common, and for which seldom more than six years purchase is given, cannot be defended on any principle of public utility or social advantage; and
common

common sense will inform the most simple apprehension, that every contract which cannot rest itself on one or other of these principles, must be dishonest, unjust, and destructive of the spirit of every human intercourse, which is general and reciprocal benefits.

There is no honest trade so lucrative as to allow a profit on money borrowed by annuity at six years' purchase, and therefore there can seldom be one of that sort sold but upon some sudden emergency, or some very pungent distress, which this scandalous contract palliates for a moment, to rivet it the closer and to confirm it for ever; like the medicines of a quack, or the bottle of a drunkard, which rock the senses for an hour to awake an idiot or a cripple. The other pecuniary contracts not within the statute of Queen Anne, we have seen to be supported on principles both of public and private prosperity; both of which militate against annuities; the public good is sacrificed by gaming and extravagance, and by a sudden and fraudulent transfer of property from the respectable orders of men to the very dregs of the community who are tied
by

by no bonds to the public happiness. The first principles of society are trampled down by one man preying like a beast upon another, and all mutual advantage lost sight of in the certain loss if not the utter ruin of one of the parties.

And shall a hydra of this kind be suffered to spread destruction through society under the auspices of law? shall the dignity of a court of justice be debased by enrolling judgments confessed under the dures of necessity or the delirium of passion? To what purpose is the property of the subject protected by the laws from the robber and the thief, who can only take what is possessed at present, if the arm of avarice and fraud may be stretched out with impunity to the future, to rob to the farthest verge of life, and to prey upon unborn generations.

Nor is it the infatuated gamester or careless spendthrift that are alone or chiefly to be lamented; the most useful and laborious servants of the public are rendered miserable for life by this inhuman traffic; the officers of
the

the army and navy led into inevitable expences beyond the annual income of their commissions, incurred for the public defence, are snatched up by these harpies, and their subsistence shared among Jews or worse Christians in the luxuries of London, while they are suffering hunger and cold, and worse than death for their country; five years' purchase is the most they receive from the additional hazard of military life, the conscience of the Jew is at rest from this calculation, who eats his pork in a corner while the gallant soldier is starving.

Surely if parliament cannot raise their pay, or prohibit this aggravation of poverty, it might establish a fund where subalterns or others at the recommendation of their superiors, might borrow small sums rendered necessary by emergencies of duty, to be refunded by a small stoppage on their pay, which at the same time that government would be indemnified, would not be felt by the officer. This is indeed a digression from my subject, but I am led to it by a warm affection for many individuals, and by an admiration of a profession which

which many whose services might have one day been essential to their country have been forced from necessity to relinquish.

But annuities for the life of the seller are not only injurious to the individual who suffers; let us view them on more general principles and arraign them before the tribunal of the public.

Legal interest is the life and spirit of commerce, usury is its bane and destruction: for without money to be lent on reasonable terms, there must be a total stagnation of trade; but who will lend money to industry for 5 per cent. if folly will give 30? There never was a time therefore when money was so hard to be got for any useful enterprize as at present: for while the merchant, the mechanic, or the projector are treating for a loan with a monied man's broker, on a calculation of risque on the one hand and advantage on the other, a gamester comes in sweating with the evidences of his property, prays to be served on any condition, and begs for God's sake to be ruined with all possible dispatch;
the

the broker who is only an agent bows at his levée, and promises to speak to his principal, for such is the name by which these invisible gentlemen are called, who have no principle at all; the principal considers the securities and interests, and the gamester's terms being always the greatest, or rather being upon no terms, he is sure to be preferred, and the tradesman who had depended on his loan may become a bankrupt if he pleases, and trade may go to the devil.

The prey being now in the toils let us follow it to the death: in a short time the interest becomes due; if it is not paid, and any thing remains unincumbered, the broker is perfectly contented, he suffers it to accumulate, till it rises to a sum which is liquidated by the sale of another annuity, and in this manner immense incomes are melted away, although the seller never receives any more than the small original sum advanced on the first sale; the rest falling into the lump by the accumulation of the interest, and forming by time a new capital which is paid for without being received. It may not be improper to illustrate

trate this by example, for it is an infatuation too unreasonable to be at first apprehended.

A man possessed of an annuity of three thousand pounds per annum for his life charged on a real estate, or on government security, as by an office for life of that extent, sells an annuity of a thousand pounds per annum for six thousand pounds, or six years purchase: the money being probably spent before the loan takes place, peace be to its manes; the seller then has now only an income of two thousand per annum, the other thousand being pledged for the sum borrowed; and as he could not live before upon three, we may suppose two, as not sufficient to defray his expences, which will oblige him to encroach on the other thousand, which only remains in his hands waiting the broker's call. In six months five hundred pounds becomes due to the lender, who upon apology made, bows and says it is mighty well; but at the end of other six months five hundred pounds more being due, and the broker having great necessity for the sum, is extremely sorry to be troublesome, and is very willing to be payed
it

it on the most agreeable terms to the gentleman, who has no other way left than by selling another annuity of two hundred pounds per annum at five years purchase to liquidate this accumulated interest; now if the gentleman's expences continue the same, and they are rarely found on these occasions to diminish, his difficulties will naturally increase when his funds are reduced to eighteen hundred pounds; the interest will grow up again and must be satisfied in this accumulating ratio of ruin.. Thus the fall of a spendthrift, is like that of all other falling bodies, the velocity is increased as the distances decrease from the attracting centre: this history of an individual has a strong analogy to a nation which anticipates the revenues of posterity, and deserves to be well considered by the trustees of the public.

The money thus appropriated by the lowest and most worthless part of the community, is always re-employed in the same traffic, and multiplying a thousand fold, is carried out of the country in specie by foreign Jews, and invested in the different funds of Europe, to

F

the

the impoverishment and disgrace of Great-Britain; and as to the money advanced by them for annuities sold, it returns so faithfully by a thousand channels to its original bed, that it cannot be better traced than by describing a circle which always ends in itself.

That it is the indispensable duty as well the indisputable right of the legislature either to dry up this source of destruction, or to confine it by proper regulations, cannot I think be denied: but here a more important question arises, similar to that we may suppose to have arisen in the breast of the Deity when the first man ruined himself by his transgression; no less a question than how to reconcile mercy and justice together; how to give the statute a retrospective operation, without deviating from the purest spirit of equity, and without that blot upon legislation, an *ex post facto* law. It is a generous subject of enquiry, and at least ought to command candour and attention.

But before I enter upon it I shall premise a sentiment which may not only cause it to be

be considered with more moderation, but may serve at the same time to shew that I believe it to be founded on justice; I hold every gentleman to be so indelibly bound by every contract voluntarily entered into without circumvention, and at the years of discretion, that no exception can be taken to it by himself as an individual, without doing an injury to his character; that nothing but one universal injunction of the legislature founded upon reciprocal justice, can remove or even moderate the oppression; and that even then, if a solid objection could be offered to its equity, no man of honour could receive its protection. After this declaration I can with the more confidence proceed to investigate the subject.

Altho' an offence that is *malum in se*, which every oppression of a fellow creature must be, cannot properly be the object of an *ex post facto* law, since there is a duty in conscience to abstain from it antecedent to any human prohibition, yet that legislature would justly be branded as arbitrary, that would create or aggravate a *positive* punishment to be inflicted
for

for an offence committed before the publication of the first or additional penalty: but it is very different with regard to only a negative punishment, or the subtraction of an unreasonable advantage, when such advantage was to be deduced from an iniquitous proceeding, though not within the reach of any positive law: here although the legislature cannot with justice award a retrospective punishment, yet it may prune an unreasonable expectation; without causing a positive loss, it may negatively prevent an illegal gain, and without punishing the usurer for an extortion not within the letter of usury, by cancelling his security, might mildly reduce him to the level of common interest, and place him in the same situation as if he had been an honest man.

To illustrate the equity of this retrospective operation, let me suppose an annuity of a thousand pounds per ann. for the life of the seller, to have been granted to a Jew, or to a nominal Christian, in consideration of six thousand pounds any number of years ago,
and

and that a law should now pass, utterly abolishing such annuities for the future, and reducing the holders of those already granted, as nearly and as favourably as possible to the condition of lenders at 5 per cent.

And here it will be necessary to consider and distinguish with great attention the equitable limits of the retrospection proposed; for although those annuities sold so many years before the passing of the act, as to have fully reimbursed the lenders both in principal and interest, might perhaps without any arbitrary stretch, be fairly extinguished by its operation, yet no such extinction is proposed; for although the statute works retrospectively by encircling those contracts already entered into, yet it does not act upon them 'till the future; it is only the object of the operation that is retrospective, and not the operation itself; it looks back indeed and comprehends obligations created before its enactment, but does not begin to work upon them 'till a fair warning is given by promulgation.

To

To continue therefore the example of an annuity of a thousand pounds per ann. sold for six years' purchase, it will follow from these principles, that the act would not consider how many years it had been held, or how far it had repayed the lender before the passing of the law, but would only begin from that time to reduce his future expectations to the standard of common interest. He would therefore in the first place be entitled to receive his annuity six years to pay up the principal, and a year and ten months after that for six years' interest of six thousand pounds; and then the annuity to cease, the bond to be void, and the judgement to be cancelled as soon as the date of the deed manifested the principal and interest to be paid up, unless the contrary could be proved by the holders, which would be legally discussed like other facts by a jury, and the judgement be continued in full force 'till cancelled by the full operation of the statute.

If on the other hand the seller dies before it is payed up, the statute does not take effect at all, and the buyer is exactly in the same
situation

situation as if it had never passed, since the annuity must have sunk at all events on the death of the grantor. The act therefore though it abridges an exorbitant gain, cannot possibly induce any positive loss; and notwithstanding this retrospection the Jew is still in a better situation than a lender at five per cent; for although he has perhaps received his whole capital back before the passing of the law, yet of that no notice is taken, and although he afterwards receives a sixth part of the principal the first year, and every year after by the regular payment of the annuity till the six thousand pounds is recovered, yet he is paid the full interest of the whole sum for the complete term; and if the life of the seller had been insured by the buyer, the act might direct a continuance of the annuity till such insurance was likewise paid up.

If ever equity policy and humanity united in a law they are certainly to be found in this. By such a statute, every public and private advantage would be encircled, without arbitrarily disposing of the property of the subject or removing the landmarks

marks of justice; none but the abandoned usurer could complain who sheltered under the imperfection of all human institutions, sits like the cruel spider in a gloomy corner spreading his webs for the thoughtless race that sport and flutter in the sun.

I am sensible however that objections may be offered to this retrospective operation, and therefore in order to prevent controversy, I admit the plausibility of opposition and shall state with candour the arguments which appear to me the most ostensible against it.

The objection which seems the most naturally to offer itself is this, That as the greater hazard than the general estimate is the principle on which the increase of the compensation is founded, it would be highly unjust in parliament to reduce annuities to the standard of loans on real security, where the principal is neither sacrificed nor in danger; that as the capital is never to be repaid, (except at the pleasure of the seller which at once discharges the annuity,) and as the interest itself is for life only, there can be no analogy between
the

the two contracts and therefore no justice in putting them on a similar footing; for who would run the risque of losing entirely the principal but from the prospect of receiving a higher compensation than when it is not in danger. The answer to this objection is very short, and indeed has been already given, viz. That the statute does not begin to operate till the risque is at an end on which the superior compensation is founded, by both principal and interest being recovered; and as to the subtraction of the greater advantage founded on the superior hazard, it demands no apology from the legislature; the man who carries on an illicit or even an equivocal trade is very mildly used by being no loser, though he gains nothing.

The second objection is more plausible and more difficult to be refuted. For it may be urged that there can be nothing more absurd or unjust than the doctrine of extinguishing a loan by the accumulation of the interest without returning the capital; that even when money is lent at five per cent. the interest pays back the principal in twenty years, yet no-

G

body

body ever entertained so preposterous an idea as that the debt should extinguish of itself without paying back the original sum in gross, because the lender had received it back in dribblets by the compensation for the use. I confess that at the first glance there seems to be an analogy between the cases, but which vanishes on a nearer inspection : for in the case of the loan at five per cent. the interest is considered merely as the regular self produce of the money which it annually brings forth without the ministry of industry or trade in the owner, and therefore the borrower by his application of it to the various purposes of social commerce is supposed to secure his own profit over and above the common interest due to the lender, and must therefore continue to pay that interest for ever, unless the money was borrowed for a limited time, in which case he must in equity and indeed in common sense repay the capital in gross, even although the lender may have received a hundred years interest, which is five times the capital ; because the legislature estimates the use of money to be worth five in the hundred and no more, and therefore when the interest

interest does not exceed this allowance by law. It is a simple compensation for the use, and can have no more tendency to extinguish the principal than a weekly payment for the hire of a horse can give the hirer a property in him when the hire has run up to the value. But in annuities granted for the life of the seller at six years purchase, the sixth or seventh part of the whole sum borrowed which must be annually paid by the grantor, is by no means considered as interest, for on that footing I should not be under the necessity of attempting to prove them to be usurious contracts, they would be *felo de se* from the exorbitancy of the interest without my interposition; but they will tell you and with truth that the annuity is by no means to be considered in the simple light of interest, but as the gradual recovery of the capital borrowed, together with its interest, formed on the estimate that the life will so long continue as to make this double return; placing the extraordinary profit on the one hand against the extraordinary risque on the other. The very grounds then on which annuitants themselves pretend to defend their contracts, demonstrates the difference I am endeavouring to prove

prove, and shews that in contradistinction to common loans, the principal and interest extinguish together till death shuts the account. When therefore the hazard is altogether done away by the feller's outliving the estimate formed of his life, can there be any thing so repugnant to common justice as that a compensation should continue to be paid perhaps for a very long life, doubling the capital every fix years, altho the single pretence on which the rate of common interest is evaded, has fallen to the ground by the continuance of the fellers life beyond the calculation on which the contact was founded? the usurer then is driven to this last reply; That the enjoyment of the annuity after the risque has become extinct by the fellers surviving the estimate, formed of his life, is the compensation for the hazard of his dying within it; a plea which would be equally good for a highwayman, who having taken a purse at the risque of his neck should plead it as a just title to preserve it.

Parliament therefore may justly address them in the following manner: " The basis

“ fis of your contract is the uncertainty of
 “ life, and the basis of your superior profits
 “ is likewise that uncertainty ; we therefore
 “ leave you to the indulgence of that chance,
 “ as far as a reasonable compensation reaches,
 “ and do not begin to interfere till it is ob-
 “ tained : but after the cloak of hazard with
 “ which your oppression is veiled, falls off, or
 “ rather is worn out by time, we cannot suf-
 “ fer you to triumph in the prosperity of ini-
 “ quity, but must reduce you to the common
 “ standard of fair dealing ? Ye have taken
 “ an unjustifiable advantage of human frail-
 “ ties and necessities, which we forbear to
 “ punish by destroying your security alto-
 “ gether, not from any tenderness for you,
 “ but because we cannot do it without vio-
 “ lating the principles on which the laws are
 “ founded, which require a publication previ-
 “ ous to the imposition of a *positive* penalty :
 “ we therefore consider the money as fairly
 “ lent, and only allow the seller an equity of
 “ redemption, not by paying back the prin-
 “ cipal and interest at once, which he may al-
 “ ready do by law, and which from his situ-
 “ ation he is unable to perform, but by pay-
 “ ing

“ ing it in the very manner in which your
 “ contract itself supposes your indemnifica-
 “ tion and advantage is to accrue, viz. by the
 “ annual produce of the annuity for the num-
 “ ber of years which he is estimated to live.
 “ That annual produce we do not disturb
 “ while the return is making which justice
 “ demands; we only correct the error of your
 “ calculation, converting the *mortuum* into a
 “ *vivum vadium*, and stopping you short when
 “ justice is satisfied. Your lives have been
 “ spent in hunting the world for objects of
 “ distress to feed your avarice, and your drink
 “ has been the tears of affliction; from that
 “ disgrace we have saved you for the future.
 “ Go then and atone for your past sins by
 “ continuing the pursuit of want to comfort
 “ and relieve it.

In submitting these opinions to the criti-
 cism of the public, I only desire that the
 principles may be well attended to on which
 they are established, and that the retrospec-
 tion proposed may not be confounded with
 an insolvent charity. For although it is an
 act of equal mercy (and of infinitely greater
 im-

importance to the public) that the higher orders of men as well as the lower, should be occasionally disencumbered from debts that prevent them from fulfilling the duties of their stations, yet I disclaim and disavow the principles of acts of insolvency altogether; because they never can relieve on one hand without oppressing on the other; it is generally* the most undeserving that enjoy their protection, and the loss always falls on commerce and industry; they often screen unprincipled vagrants at the expence of honest laborious tradesmen and their dependent families: they have besides a bad political tendency, they familiarise the multitude with the extinguishment of debts legally contracted, and accustom them to see the law manacled and unable to support contracts entered into under its most public and sacred auspices;
they

* By a clause in the last insolvent act, the future personal estates of debtors discharged by it are protected against their creditors to any amount, except money in the funds. This enlargement of protection, though avowedly founded on principles of public policy, is certainly a grievous hardship on individuals.

they promote extravagance by pulling out its sting, destroy the little principle that remains among the lower orders of the people, and tend strongly to loosen that trust which is the cement both of public and private society. But nothing can be more totally opposite than an insolvent act, and the proposals I have already stated. The first cancels a legal debt altogether, the second fulfils even an illegal one, by not only restoring the principal lent, but likewise as high a compensation for the use as ever is permitted on bonds the most indisputably legal. The one is an absolute loss to the fair trader, the other only a negative loss to the unfair one; the first strikes at the security of commercial dealings and abridges the operation of the ordinary course of justice; the second reduces unreasonable contracts to the genuine standard of every human intercourse, and confirms the authority of the laws by disappointing all that seek under the shelter of forms to disobey their spirit and intention.

There is still another path to misery, not less beaten by youth, nor less haunted by usurers, called in common speech a *post obit*;
by

by which is understood a sum of money advanced to a person having a certain reversion, or indefeasible expectation, he giving his bond for a much larger sum, payable on the death or other event by which the possession of his fortune arrives to him. In these transactions the repayment being altogether a contingency, and not making any present return like an annuity, they are not so reducible to market prices upon general calculations, but depend on particular circumstances, and are supposed to be founded on an equitable estimate of the inconvenience of lending without any present interest, and the hazard of entirely losing the principal; for the security being merely personal, should the obligor die before his property becomes vested by the death or other event on which the repayment depends, the obligee's money is entirely lost.

It must be confessed that this contract is highly useful in the common intercourse of life, and indeed absolutely necessary in a commercial country. There are situations where a very small present sum may not only save a man from a ruinous misfortune, but even be

H

more

more beneficial to him in promoting his prosperity, than fifty times the sum at a year's distance. It is the regulation therefore and not the abolition of such contracts that is to be desired; they require only to be reduced to the great standard of all social commerce, in the mutual advantage of the parties, instead of being suffered to depend on the degree of necessity on the one hand, and of avarice on the other.

From this prostitution, and the passiveness of the legislature, they seldom answer the beneficial purposes of which I have supposed them to be occasionally productive. Wants which arise from vice and folly, and which are pursued at the heels by misery and dishonor, raise the market beyond the price which either honesty or prudence can pay for the flitting prospects of futurity. The necessities of misconduct are so much more headlong than the mere occasions of poverty, or the schemes of laudable ambition, that whenever they come in competition together, it is to the loss of all three. The spendthrift heir is preferred, receives the money, and is ruined; the other two are prevented

vented from receiving it, and are ruined likewise. Many men of spirit and industry both in trade and in the liberal professions, are daily sinking in the very harbour's mouth of fortune, for want of a friendly rope being thrown to them from the shore; because the strand is crouded with savages, and every cable employed in drawing wrecks to the land for plunder.

The abuse of this contract most frequently happens in laying a snare for youth, before prudence has acquired any predominance over levity or appetite; I am well assured that they do not now suffer them to get the length of the threshold of life, but set traps for them in the very schools. They are obliged indeed in these cases to trust to good faith instead of law, and the security is equal; for no man of probity will refuse to fulfil a contract into which he has voluntarily entered, although he cannot be compelled to perform it; and daily experience demonstrates that those who have no probity, who are totally devoid of common honesty in every fair and reason-

able

able engagement, are willing martyrs to the vain shadow of honor.

This destruction of youth is not a little aided by the sordid marriages which are now become universal. A modern settlement is admirably calculated to make a whole family miserable : the wife secure in her pin money and jointure has no object in pleasing her husband, and the children look up to the trustee instead of to the father : the parent has set his seal to leave equal portions to them all, although some of them may be supporting his head from that pillow which the others have sown with thorns ; there is nothing left to create dependance and respect on the one hand, or to reward affection on the other ; every cement of protection and gratitude is lost ; and to atone for these mischiefs, the indefeasible inheritance protected by cart loads of indentures, occasions by a destructive anticipation that very poverty it was intended to prevent.

Every prudent man may in some measure save his children from this ruin, by leaving
in

in himself that power which no Father ever gives up without a crime both against God and society. Harmony and good order must begin first under domestic government, and diffuse itself by degrees through the larger combinations of society, and if from the imperfection of laws, or the perversion of manners, a general mis-government falls on these minute and natural subdivisions of mankind, the infection communicates to the great political movements, and the state and the parent loose their authority together. The empire of China which by this police is an aggregate of families, of which the Emperor is the general patriarch, has escaped the fate of our short lived insect glories, and while Europe has been laid waste by savages, ripened again into civilization and is again tottering on the brink of oblivion ; while the very records of our boasted policies are lost in the obscurity of barbarous legends, and blotted in every page with blood, that wise people have never changed their form of salute or the plait of their garments. Whoever has read their history or rather their description with attention will require no arguments to convince him that

that this simple principle is the foundation of all that miraculous police which has preserved from ages to ages under one single head, almost as great a number of men as are contained in all Europe and our American colonies together.

I am highly sensible of the great difficulties that must attend any attempt to reform mischiefs so various and universal. Usury is a Proteus which puts on more shapes than I have either leisure or knowledge to pursue, and which must be all crushed together or the remedy would be invidious and defective: a thing impossible by the most judicious single regulation, without a severity inconsistent with freedom and which would defeat its own purpose; when either physic or laws are too severe, they are vomited up again and never enter the circulation. But there is no mischief that can stand before a pursuing persevering legislature; even the popish clergy were hunted out of all their strong holds, though earthed in the very centre of the human heart. But this was not the pursuit of a sessions, it was a chase of

burst

three

three hundred years, from the time that Becket was unkennelled in the reign of Henry the Second 'till the modern æra of the reformation.

It has been said that a great Personage, whose illustrious example in itself should have a diffusive weight, has expressed a desire that some immediate step should be taken for the prevention of the growing evils which have been the subject of this little Essay; if this be true, it is to be hoped that either some remedy will be attempted, or that a change of manners among the great may render it unnecessary. Since we hazard so much by the influence of the crown, it is but fair that it should be made up to us by the influence of the Royal character.

F I N I S.

(22)

1940

1944

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

1910

[Faint circular stamp]

1940

1941

1950-1951

1910

THE UNIVERSITY OF CHICAGO

[illegible]

1941

1990

21717

